

SCHOOLS:
PUBLIC SCHOOL
RETIREMENT SYSTEM:

Teachers of inmates of the Department
of Corrections not included.



March 26, 1956

Honorable James D. Carter
Director
Department of Corrections
Jefferson City, Missouri

Dear Colonel Carter:

Your request for an opinion from this office reads as follows:

"The Sixty-Eighth General Assembly in House Bill No. 377 requires that the Department of Corrections 'plan and institute a long-range program and courses of instruction for the education of the inmates'. We are further required to have an educational program that meets 'the standards and requirements set for other public and vocational schools of the state'.

"Teachers and officials of the public schools participate in a Retirement System. This system requires that such persons be 'duly certified under the law governing the certification of teachers'. A provision is provided under Section 169.130, Missouri Revised Statutes whereby any person 'employed full time as a teacher by the state board of training schools, or employed full time as a teacher by a division of the State Department of Public Health and Welfare and who renders services in a school whose standards of education are set and which is supervised by a public school officer of the county in which the school is located or by the State Department of Education

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shall be a member of the public school retirement system of Missouri'.

"The Executive Secretary of the Public School Retirement System informs us that we will not be covered by the law until such time as we have an accredited school or the law is amended to include us as done for the training schools and the Department of Public Health and Welfare. We will be unable to obtain qualified teachers unless we can offer retirement benefits. Accredited teachers are required before we can be fully accredited by the State Department of Education.

"Rules and regulations of the Missouri State Personnel Division requires that all teachers employed under the state merit system possess necessary teaching certificate from the State Department of Education. We believe that inasmuch as our teachers are duly certified by the State Department of Education that they are entitled to participation in the Public School Retirement System of Missouri."

The request refers us to the provisions of Section 169.130, respecting the certification of a person as a teacher who is employed full time as a teacher by the state board of training schools, or by a division of the state department of public health and welfare, et cetera, in relation to the public school retirement system.

Said Section 169.130, RSMo 1949, now appearing in 1955 Cumulative Supplement, pages 359, 360, reads as follows:

"Teachers at state institutions and teachers' associations as members - contributions. -

"1. Any person, duly certified under

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the law governing the certification of teachers, employed full time as a teacher by the state board of training schools, or by a division of the state department of public health and welfare and who renders services in a school whose standards of education are set and which is supervised by a public school officer of the county in which the school is located or by the state department of education is a member of the public school retirement system of Missouri. Any such person who becomes a member before the end of the school year next following the effective date of this section may claim and receive credit for prior service. The contributions required to be made by the member's employer shall be paid from appropriations to the institution by which the member is employed.

"2. Any person, duly certificated under the law governing the certification of teachers, employed full time by any statewide nonprofit educational association or organization serving on an educational professional basis through its membership the active members of the public school retirement system of Missouri or the public school districts maintaining high schools in this state, may be a member of the public school retirement system of Missouri. Any such person who becomes a member before July 1, 1955, may claim and receive credit for prior service. The contributions required to be made by the member's employer shall be paid by the association or organization."

Until after 1947 the laws of Missouri did not provide

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authority for the division of health of the department of public health and welfare or the state training schools at Booneville, Chillicothe and Tipton, all in this state, to make contributions out of their appropriations for teachers employed by such schools to make such teachers eligible as members of the retirement system to share in the public school teachers' retirement system's benefits.

Following the issuing of an opinion of this office on August 25, 1947, the Sixty-fourth General Assembly of Missouri, Laws of Missouri 1947, Volume II, page 326, amended an act of the Sixty-third General Assembly, Laws of Missouri 1945, pages 1353 to 1366, requiring that a public school retirement system of Missouri be created and administered, by adding a new section to be designated as Section 15, relating to the same subject matter, and providing that certain persons employed by the state board of training schools shall be members of the public school retirement system of Missouri. We are transmitting a copy of the said opinion dated August 25, 1947, as constituting the ground upon which the Legislature so passed such amendment.

We are also transmitting a copy of the opinion of this office dated October 31, 1949, to Honorable G. L. Donahoe, Executive Secretary, Public School Retirement System, Jefferson City, Missouri, which holds that the state librarian and other personnel of the Missouri Library Commission were not persons employed by the State Department of Education or by the State Board of Education within the definition of the words "employer" and "teacher" as those terms are defined in the law (House Bill No. 151, Laws Missouri, 1945, page 1353, as amended), setting up a public school retirement system for teachers in Missouri and were, therefore, not entitled to participate in the benefits of such law. That opinion contains the reasoning and the citation of statutes upon which, under like circumstances, this opinion is based, whereby we hold that the department of corrections is not included in the provisions of any statute in this state authorizing state institutions to employ teachers and instructors for the instruction of its inmates as are the board of training schools and the division of health of the department of public health and welfare which are specifically placed under the public school retirement system by the terms of Section 169.130, supra, so as to render such teachers and instructors eligible to certification as full time employed teachers so as to permit them to participate as

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members thereof in the benefits of the teachers' retirement system but who were held not to be under such retirement system by the said opinion of this office dated August 25, 1947.

The department of corrections cannot be held to be included in the provisions of any statute of this state authorizing state institutions to employ teachers and instructors for the instruction of its inmates, as are the board of state training schools and the division of health of the department of public health and welfare, so as to render such teachers and instructors eligible to certification as employed full time teachers so as to participate as members thereof in the public school retirement system, without and until legislation is enacted permitting them so to do.

The executive secretary of the public school retirement system in advising you, as noted in the request, that the department of corrections is not covered and will not be covered by the statutes of this state in that behalf until the statutes of this state are amended to include such department of corrections is, we believe, correct.

CONCLUSION

It is, therefore, considering the premises, the opinion of this office that the teachers employed by the department of corrections of Missouri are not eligible to membership in the public school retirement system of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Crowley.

Very truly yours

John M. Dalton
Attorney General

GWC:lc

2 enclosures